

MISSISSIPPI DIVISION OF MEDICAID  
HOME & COMMUNITY BASED SERVICES WAIVER INCOME TRUST – HELP SHEET

The purpose of an Income Trust is to allow an individual with recurring excess monthly income who has exhausted all available resources to become eligible for Medicaid while participating in a Home and Community Based Services (HCBS) Waiver program. Certain conditions apply which are outlined below. The federal authority for an Income Trust is found in Section 1917 (d) of the Social Security Act (42 U.S.C. §1396 p (d) (4)).

**Basic Income Trust Rules:**

1. An HCBS Income Trust is available for someone receiving an institutional level of care while living in a private living arrangement that meets the requirements of home and community based settings. The HCBS Income Trust is not permitted unless the individual is enrolled and participating in a HCBS waiver program.
2. An individual requiring an Income Trust who has a court appointed conservator must furnish a copy of the Chancery Court Order authorizing the conservator to establish the Income Trust. The court must be made aware of the Income Trust requirement to pay the MS Division of Medicaid any accumulated trust funds up to an amount expended by Medicaid under the terms of the Income Trust.

**Income Trust Requirements – Please read carefully:**

3. Income that funds the Income Trust is all income due the individual from all sources such as Social Security, pension benefits, interest income and any/all other types and sources of income. The individual's right to receive income should not be transferred to the Income Trust; instead, the individual must first receive the income and then place it into the HCBS Income Trust.
4. The HCBS Income Trust must specify the effective date of the trust. The effective date is the date the individual is determined eligible for Medicaid on all factors, including the date a waiver slot is available and HCBS services have been approved. Consultation with the Medicaid Regional Office is needed prior to the execution of the trust to confirm the effective date needed. Medicaid eligibility can begin in a month later than the stated effective date of an Income Trust but Medicaid eligibility cannot begin in any month prior to the stated effective date of an Income Trust. An executed Income Trust without an effective date will begin on the date the trust is signed and dated if the individual is otherwise eligible.
5. Funding of the Income Trust begins in the month the Income Trust is effective or the beginning date of Medicaid eligibility, whichever is later.
6. The HCBS Income Trust must distribute to the individual, or for his/her benefit, an amount equal to not more than \$1 less than the then current Medicaid institutional income limit. The Income Trust will not specify the amount of the individual's income to be released as this amount may change each year since the Medicaid institutional income limit is subject to change each year. The Trustee will be notified in writing of the amount of income that must fund the HCBS Income Trust each month in order to meet the terms of the Income Trust.

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**Income Trust Requirements (Continued) – Please read carefully:**

A bank account that is separate from the account used for the individual’s living expenses must be established for income that must fund the trust. The account does not have to be styled as a trust account; it only has to be a separate account for accumulated funding that will be electronically verified by the Division of Medicaid for compliance with the Income Trust provision. If electronic verification is not possible, the individual must verify the separate account and account balance at the time of application and at each annual review.

7. A letter specifying the payment due from accumulated trust funds will be issued at each review of the individual’s Medicaid eligibility, which is at least annually, while the HCBS Income Trust is in existence. **Failure by the Trustee to make the payment by the due date specified in the letter will result in the loss of Medicaid eligibility for the individual.**
8. When requested, the Trustee must provide an accounting to the Division of Medicaid to show all receipts and disbursements of the Income Trust during the prior calendar year. Any disbursements not approved by the Division of Medicaid or provided for by the Income Trust will result in the loss of Medicaid eligibility for the individual.

**Completing the Income Trust:**

9. The Division of Medicaid provides a model HCBS Income Trust agreement for individuals in need of an Income Trust. The only change to this legally binding document that is acceptable is to add a successor Trustee or Co-Trustee. Any changes must be approved by the Division of Medicaid prior to execution of the trust. Once approved and accepted by the Division of Medicaid, the document cannot be modified without prior approval by the Division of Medicaid.
10. The individual requesting eligibility under an Income Trust is referred to as the “Settlor” in the Income Trust document. The Trustee is the individual or entity (such as a bank) that manages the trust and has fiduciary responsibilities. The Settlor and Trustee cannot be the same person.

**Income Trust Restrictions:**

11. An HCBS Income Trust is used only for income belonging to the individual. No resources (assets) may be used to establish or augment the Income Trust as this will void the trust exception, resulting in the loss of Medicaid eligibility.
12. No fees are allowed to be paid to the Trustee for their service. In the event funds are retained in the trust, administrative fees are limited to \$10 per month are intended to cover any bank charges required to maintain an Income Trust bank account.

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13. An HCBS Income Trust is not allowed on a temporary or intermittent basis except in instances when recurring excess monthly income will be reduced at a future date. In such a situation, an Income Trust will be allowed until such time as the excess income is reduced and an Income Trust is no longer required to allow eligibility.
- Income received less often than monthly does not qualify as recurring excess monthly income that allows the use of an Income Trust.
  - Irregular or infrequent income must be converted into a monthly income before allowing an Income Trust to be established.

**Termination of an Income Trust:**

14. An Income Trust terminates at the individual's death, when Medicaid eligibility terminates or when the trust is no longer necessary or the trust is otherwise terminated. The need to terminate an Income Trust prior to the individual's death may occur in the following situations:
- The individual's recurring monthly income decreases to an amount below the Medicaid institutional income limit, meaning an Income Trust is no longer needed in order for the individual to qualify for Medicaid based on income.
  - Medicaid state or federal policy changes regarding how certain income must be counted resulting in the disallowance or the need for an Income Trust.
  - The individual is discharged from the HCBS waiver program resulting in the disallowance of an Income Trust in order to qualify for Medicaid.

At the time an Income Trust is terminated, all amounts remaining in the Income Trust must be paid to the Division of Medicaid up to an amount equal to the total medical assistance paid by the Division of Medicaid on behalf of the individual that has not previously been paid to the Division of Medicaid. The Trustee will be notified in writing of any remaining trust funds that are due and payable to the Division of Medicaid.

An Income Trust is a very simple trust that accomplishes the specific goal of receiving income and disbursing it for the sole purpose of allowing an individual in a nursing facility with income in excess of Medicaid income limits to qualify for Medicaid. It is not intended to be a complex fiduciary trust. For more information, attorneys drafting an Income Trust may contact the Division of Medicaid's Legal Unit at (601) 359-6050.